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| 09/977,151      | 10/12/2001  | Brian M. Adams       | A-70895/RBC/VEJ     | 3896             |

7590 10/02/2003

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| EXAMINER |
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HYLTON, ROBIN ANNETTE

| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 10/02/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/977,151

Applicant(s)

ADAMS, BRIAN M.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Election/Restrictions***

1. The election of species requirement set forth in the previous Office action is hereby withdrawn.

***Claim Rejections - 35 USC § 112***

2. Claims 11, 12, and 15-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 11 recites the limitation "said spout flange" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation "said upper end" in line 10. There is insufficient antecedent basis for this limitation in the claim. It is suggested line 1 be modified to read in part -- and upper end and a lower end --.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Matzka (US 3.610.484).

Disclosed is spout 1, frangible member 15, horizontally extending member 17 having first and second ends (seen in figure 3), the second of the ends being remote from the first end, an upper portion of the horizontally extending member being above the upper end of the spout (seen in figure 4), and at least two frangible connectors 18 and 19 connecting a portion of the horizontally extending member to a portion of the frangible member.

5. Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by Molin et al. (US 6,591,999).

Disclosed is spout 6, frangible member 11, horizontally extending member 12 having first and second ends, the second end being remote from the first end, an upper portion of the horizontally extending member being above the upper end of the spout (seen in figure 1), and at a frangible connector 31 connecting a portion of the horizontally extending member to a portion of the frangible member.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Molin in view of Matzka.

Molin teaches the claimed fitment except for at least two frangible connectors.

Matzka teaches it is known to provide at least two frangible connectors.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply at least two frangible connectors to the fitment of Molin as taught by Matzka. Doing so ensures the security of the engagement between the extending member and the membrane and prevents inadvertent removal.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molin in view of Matzka.

Molin teaches the claimed fitment except for at least two frangible connectors.

Matzka teaches it is known to provide at least two frangible connectors.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply at least two frangible connectors to the fitment of Molin as taught by Matzka. Doing so ensures the security of the engagement between the extending member and the membrane and prevents inadvertent removal.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matkza.

Matzka teaches the claimed fitment except for the semi-circular member 17 extending approximately 270°. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the semi-circular member 17 with an extension approximately 270°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

11. Claims 1,3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks (US 5,839,627) in view of Gzybowski et al (US 6,467,638).

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Hicks teaches the claimed fitment except for a semi-circular member having first and second ends, the semi-circular member being helical and extending approximately 270°. Hicks teaches at column 5, lines 4-6 that the member can have other shapes as desired.

Gzybowski teaches a gripping member having helical and semi-circular configuration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the gripping member with a semi-circular and helical member having first and second ends, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the semi-circular member with an extension approximately 270°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above and further in view of Wise et al. (US 3,135,441).

Hicks as modified teaches the claimed fitment except for gripping protrusions on the semi-circular member.

Wise teaches it is known to provide gripping protrusions on a member used to remove a membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of gripping protrusions on the modified gripping member Hicks as taught by Wise. Doing so provides a more secure grasp on the member.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above and further in view of Guglielmini et al. (US 5,301,849).

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Hicks as modified teaches the claimed fitment except for a portion of the horizontally extending member being above the upper end of the spout.

Guglielmini teaches it is known to provide a portion of the horizontally extending member being above the upper end of the spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a portion of the semi-circular member being above the upper end of the spout. Doing so allows for easier grasping of the gripping member as desired to break the frangible membrane.

#### ***Allowable Subject Matter***

14. Claims 15-23 appear to avoid the art of record and appear to be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

#### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stull teaches a plurality of frangible members connecting two members.

16. This Office action is made non-final.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely

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asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-\_\_\_\_ on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
September 27, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727